

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000519-001 DT

01/20/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

STACY R REINHARDT (001)

CHARLES P FRANKLIN

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #20039005940

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
2) DUI W/BAC OF .08 OR MORE
3) EXTREME DUI-BAC .15 OR MORE

DOB: 09/01/58

DOC: 09/17/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on December 8, 2003. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, including a transcript of the tape recording of the hearing held on Appellant's Motion to Suppress on May 12, 2003, as the tape recording of that hearing was kindly transcribed by counsel for Appellant. This Court has also considered and reviewed the excellent memoranda

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submitted by counsel. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice.

Appellant, Stacy Reinhardt, was accused of committing several DUI offenses within the City of Phoenix on September 17, 2002. The basis for the stop of Appellant's vehicle was the receipt of a 911 phone call by the Phoenix police at approximately 10:42 p.m. Phoenix Police Sargeant Kevin Bryce, testified at the evidentiary hearing held on Appellant's Motion to Suppress that he heard radio traffic concerning a 911 call made to the Phoenix Police Dispatch. Officer Bryce testified:

The caller had stated that the truck was following behind another vehicle, and that it had almost rear-ended another vehicle. He also said that the GMC was threatening a female driver in either a silver Honda or Nissan vehicle, and also gave directions of travel as westbound from 42nd Place, westbound from 40th Street, northbound from 35th Place, driving through the neighborhood.¹

Sargeant Bryce directed Officer Young to stop the red GMC pickup truck, later discovered to be driven by the Appellant.² The Sargeant also testified that the 911 caller did not want to be identified, but the Sargeant described that, as the 911 caller was describing what he observed, the dispatcher described that information on the air to the police officers.³ Officer Young testified at the evidentiary hearing that he first observed Appellant's vehicle traveling eastbound on Union Hills as he was receiving a description of that exact vehicle. The officer testified that he observed Appellant's vehicle come to a stop at a green-light at Union Hills and 40th Street.⁴ Officer Young later stopped Appellant's vehicle. The trial judge denied Appellant's Motion to Suppress based upon Appellant's claim that the Phoenix police officers possessed insufficient grounds to make an investigatory stop. These issues constitute the basis of Appellant's appeal before this court.

An investigative stop is lawful if a police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime⁵ These facts and inferences when considered as a whole ("the totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."⁶

¹ R.T. of May 12, 2003, at page 15.

² Id. at page 14.

³ Id. at pages 16-17.

⁴ Id., at pages 7-8.

⁵ *Terry v. Ohio*, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1998); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

⁶ *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981).

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A temporary detention of an accused during the stop of an automobile by the police constitutes a “seizure” of “persons” within the meaning of the Fourth Amendment to the United States Constitution, even if the detention is only for a brief period of time.⁷ When information is received by law enforcement officers from a citizen who voluntarily comes forward to aid law enforcement, this information is presumed to be reliable.⁸ Arizona cases have differentiated between “citizen complaints” and “anonymous tips.”⁹ An anonymous tip is untraceable information by an unknown caller which may, if sufficiently detailed to indicate that the informant came by the information in a reliable manner, be sufficient to justify a reasonable suspicion to make a stop.¹⁰ Generally, Arizona cases have supported the proposition that reliability is greater from a “citizen complaint” where “an ordinary citizen volunteers information which he as come upon in the ordinary course of his affairs, completely free of any possible ordinary gain.”¹¹ Whether the police in a particular case have a reasonable suspicion to make an investigative stop is a mixed question of law and fact that an appellate court must review *de novo*.¹²

In this case the trial judge denied Appellant’s Motion to Suppress, finding:

Thank you, gentlemen. I’ve considered the evidence and arguments of counsel. I don’t know that I would agree that the officer created a situation. Officer Young’s testimony is that he cut his lights and sirens off two blocks before that intersection, and he did give specific articulable facts as to why he stopped the defendant here.

I find that he had reasonable grounds based on the defendant’s stopping at a green light, as well as for the other reasons that were stated.

The Motion to Suppress is denied.¹³

The trial judge’s findings are supported by the record. The record does not reflect that the unknown citizen who called 911 and described in detail Appellant’s vehicle had anything to gain by his or her actions. This information provided by the anonymous citizen is presumably reliable, but becomes more reliable when Officer Young explains that he observed Appellant’s

⁷ Wren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁸ State v. Diffenderfer, 120 Ariz. 404, 406, 586 P.2d 653, 655 (App. 1978).

⁹ State v. Gomez, 198 Ariz. 61, 63, 6 P.3d 765 67 (App. 2000).

¹⁰ State v. Altieri, 191 Ariz. 1, 951 P.2d 866 (1997).

¹¹ State v. Gomez, 198 Ariz. at 63, 6 P.3d at 767, citing State ex rel Flournoy v. Wren, 108 Ariz. 356, 364, 498 P.2d 444, 452 (1972); See also, State v. Lawson, 144 Ariz. 547, 552, 698 P.2d 1266, 1271 (1985); State v. Diffenderfer, *Supra*.

¹² State v. Rogers, 186 Ariz. 508, 924 P.2d 1027 (1996); State v. Gomez, *supra*.

¹³ *Id.*, at page 30.

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vehicle come to a complete stop at a green light at 40th Street and Union Hills. This independent observation by Officer Young clearly establishes additional grounds for the police to conclude that they had a reasonable suspicion to believe that Appellant was impaired in the operation of her vehicle. The trial judge properly noted these facts in her ruling. This Court concurs completely with the findings of fact and legal conclusions made by the trial judge in this case (the Honorable Alice Wright, Phoenix Municipal Court Judge). This Court determines *de novo* that the facts in this case do establish a reasonable basis for the Phoenix Police to have stopped the automobile driven by the Appellant.

IT IS ORDERED sustaining the judgments of guilt and sentences imposed by the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this case back to the Phoenix Municipal Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT